

SENATE BILL No. 476

DIGEST OF INTRODUCED BILL

Citations Affected: IC 11-10; IC 11-12-5-7; IC 12-7-2; IC 12-15-43; IC 12-23-5; IC 33-14-1-7.

Synopsis: Community corrections and the mentally ill. Requires the department of correction to evaluate an offender for mental or addiction disorders and to arrange for treatment of an offender with a mental or chronic addiction disorder. Establishes a forensic collaboration program to provide services to adults with a mental illness through collaboration with criminal justice, mental health, and other service systems. Establishes a forensic diversion program to permit an adult with mental or addictive disorders who has been charged or convicted of a crime to receive treatment instead of incarceration. Creates the forensic transition fund out of money appropriated to the department of correction for incarceration of individuals with a mental illness and permits counties to receive funds from the forensic transition fund to operate a forensic diversion and forensic collaboration program. Requires the county executive to establish an advisory committee to assist the county in creating and operating the forensic diversion and collaboration programs. Requires jail and department of correction physicians to administer appropriate drugs for the treatment of mental illness or addictive disorders if these drugs are available to Medicaid recipients. Requires the department of correction to take steps to ensure that released offenders may receive Medicaid and other federal benefits as soon as possible following their release from incarceration. Makes other changes.

Effective: July 1, 2003.

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January 21, 2003, read first time and referred to Committee on Criminal, Civil and Public Policy.



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First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

SENATE BILL No. 476

A BILL FOR AN ACT to amend the Indiana Code concerning corrections and to make an appropriation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 11-10-1-2 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 2. (a) A committed
3 criminal offender shall, within a reasonable time, be evaluated
4 regarding:

5 (1) ~~his~~ **the offender's** medical, psychological, educational,
6 vocational, economic and social condition, and history;

7 (2) the circumstances surrounding ~~his~~ **the offender's** present
8 commitment;

9 (3) ~~his~~ **the offender's** history of criminality; ~~and~~

10 (4) **the offender's mental or addiction disorders; and**

11 (5) any additional relevant matters.

12 (b) In making the evaluation prescribed in subsection (a), the
13 department may utilize any presentence report, any presentence
14 memorandum filed by the offender, any reports of any presentence
15 physical or mental examination, the record of the sentencing hearing,
16 or other information forwarded by the sentencing court or other agency,
17 if that information meets the department's minimum standards for



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1 criminal offender evaluation.

2 (c) If an offender has undergone, within two (2) years before the
3 date of his commitment, a previous departmental evaluation under this
4 section, the department may rely on the previous evaluation and the
5 information used at that time. However, this subsection does not
6 deprive an offender of the right to a medical and dental examination
7 under IC 11-10-3.

8 SECTION 2. IC 11-10-3-6 IS ADDED TO THE INDIANA CODE
9 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
10 1, 2003]: **Sec. 6. (a) The department shall allow a physician to**
11 **prescribe and administer to an offender any medication:**

12 **(1) that is available to an individual who is eligible for**
13 **Medicaid under IC 12-15; and**

14 **(2) that is administered to the offender to treat a mental**
15 **illness or addictive disorder.**

16 **(b) The department may issue practice guidelines but may not**
17 **require a physician to obtain prior authorization before**
18 **prescribing or administering a medication under subsection (a).**

19 SECTION 3. IC 11-10-4-2, AS AMENDED BY P.L.215-2001,
20 SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
21 JULY 1, 2003]: **Sec. 2. The department shall provide or arrange for**
22 **the care and treatment of every confined offender who is determined to**
23 **be mentally ill by a psychiatrist employed or retained by the**
24 **department: have a mental illness or chronic addictive disorder by**
25 **a provider (as defined in IC 12-7-2-149(2)). To provide that care and**
26 **treatment, the department may:**

27 **(1) establish and operate its own mental health facilities and**
28 **programs;**

29 **(2) transfer offenders to the division of mental health and**
30 **addiction, subject to the approval of the director of the division of**
31 **mental health and addiction; or**

32 **(3) contract with any city, county, state, or federal authority or**
33 **with other public or private organizations for the provision of care**
34 **and treatment.**

35 SECTION 4. IC 11-10-4.5 IS ADDED TO THE INDIANA CODE
36 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
37 JULY 1, 2003]:

38 **Chapter 4.5. Forensic Collaboration Program**

39 **Sec. 1. As used in this chapter, "forensic collaboration**
40 **program" means a program developed to serve an adult with a**
41 **mental illness through collaboration with criminal justice**
42 **programs, mental health programs, and other service systems.**

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1 **Sec. 2. As used in this chapter, "forensic diversion program"**
 2 **means a program developed to ensure that an adult with a mental**
 3 **illness or addictive disorder who is alleged to have committed a**
 4 **crime or who has been convicted of a crime receives adequate**
 5 **treatment or other services from a provider (as defined in**
 6 **IC 12-7-2-149(2)) instead of incarceration or following**
 7 **incarceration. An adult with a mental illness or addictive disorder**
 8 **who is alleged to have committed a crime or who has been**
 9 **convicted of a crime may participate in a forensic diversion**
 10 **program:**

- 11 (1) before the adult's arrest, arraignment, or trial; or
 12 (2) following the sentencing hearing, including the period in
 13 which the adult:
 14 (A) is serving a sentence for an offense;
 15 (B) is participating in a community transition program; or
 16 (C) is on probation or parole.

17 **Sec. 3. (a) The forensic transition fund is established to provide**
 18 **for the placement of qualified individuals into a forensic diversion**
 19 **program or a forensic collaboration program. The fund shall be**
 20 **administered by the department and consists of money deposited**
 21 **in the fund from money appropriated to the department for the**
 22 **incarceration of persons with mental illnesses or addictive**
 23 **disorders.**

24 (b) The department shall deposit enough money into the fund
 25 from the source described in subsection (a) to provide a forensic
 26 diversion program or a forensic collaboration program for persons
 27 with mental illnesses or addictive disorders.

28 (c) The expenses of the fund shall be paid by the department.

29 (d) The treasurer of state shall invest the money in the fund not
 30 currently needed to meet the obligations of the fund in the same
 31 manner as other public money may be invested.

32 (e) Money in the fund at the end of a state fiscal year does not
 33 revert to the state general fund.

34 (f) Money in the fund is continually appropriated to the
 35 department to carry out the purposes of this chapter.

36 (g) The department shall develop a plan to determine how much
 37 money to deposit in the fund under this section. The budget
 38 committee shall review the plan. The budget agency must approve
 39 the plan.

40 (h) The department shall adopt rules governing the
 41 disbursement of funds to a county that complies with the provisions
 42 of this chapter.



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1 **Sec. 4. A county may receive funds from the forensic transition**
 2 **fund established by section 3 of this chapter if the county does the**
 3 **following:**

4 **(1) Documents the county's need for a forensic collaboration**
 5 **program.**

6 **(2) Designs a forensic collaboration program based on the**
 7 **county's needs.**

8 **(3) Initiates and encourages continuing community**
 9 **participation in the development and operation of the forensic**
 10 **collaboration program, including the active participation of**
 11 **individuals with a mental or addictive disorder, the family of**
 12 **an individual with a mental or addictive disorder, and**
 13 **advocates for individuals with mental or addictive disorders.**

14 **(4) Develops a plan to implement a forensic diversion**
 15 **program.**

16 **(5) Ensures that community based mental health and**
 17 **addiction services are available and accessible for individuals**
 18 **who are diverted from or who have exited the criminal justice**
 19 **system.**

20 **(6) Encourages that community based mental health and**
 21 **addiction services are based on the best practices and use the**
 22 **findings of current research.**

23 **(7) Establishes processes that provide for flexible,**
 24 **individualized, and coordinated service planning for eligible**
 25 **individuals.**

26 **(8) Provides individuals with the right to participate in the**
 27 **planning of their treatment and to receive appropriate**
 28 **effective treatment alternatives to the extent practicable.**

29 **(9) Provides services that are linguistically appropriate,**
 30 **gender competent, and culturally competent to the extent**
 31 **practicable.**

32 **(10) Designs procedures for early identification of serious**
 33 **mental or addictive disorders among people with whom law**
 34 **enforcement officials come into contact.**

35 **(11) Provides eight (8) or more hours of annual in-service**
 36 **training for at least one (1) law enforcement officer per ten**
 37 **thousand (10,000) county residents, focusing on the**
 38 **appropriate responses or intervention for people with mental**
 39 **or addictive disorders. The law enforcement official trained**
 40 **under this subdivision shall be known as a mental**
 41 **health/addiction special responder.**

42 **(12) Provides that a mental health/addiction special responder**

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shall be dispatched to the scene of any incident when it appears that an individual may be acting under the influence of a mental illness or chronic addiction.

(13) To the extent permitted by law, grants a mental health/addiction special responder the discretion to make dispositional decisions concerning the individual.

(14) Develops a specialized dispatch code to protect the privacy and dignity of the individual.

(15) Uses a standardized screening tool to assess individuals for mental illness and addiction before arraignment and to guide the provision of appropriate treatment for the mental health and addiction needs of all individuals entering the criminal justice system or incarcerated in a local correctional facility.

Sec. 5. The county executive (as defined in IC 36-1-2-5) shall appoint an advisory group that includes the following members:

(1) One (1) local judge.

(2) One (1) representative from the county sheriff's department.

(3) One (1) representative from a local police department.

(4) One (1) representative from a local adult correctional facility.

(5) One (1) representative from the county prosecuting attorney's office.

(6) One (1) representative from the county public defender's office.

(7) One (1) attorney who practices in the mental health area.

(8) One (1) representative from an addictions advocacy organization.

(9) One (1) representative of the family members of adults with addictive disorders.

(10) One (1) adult consumer of public mental health or addiction services.

The advisory group shall assist the county in developing priorities, operating the forensic collaboration program, and monitoring the effect of the program.

Sec. 6. Each county shall do the following:

(1) Establish and provide procedures for the early identification of serious mental or addictive disorders among detainees, including initial intake and assessment programs for individuals who are arrested.

(2) Permit an individual who:

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(A) is not charged with a crime involving serious bodily injury; and

(B) has had more than one (1) prior conviction for a crime involving a forcible felony (as defined in IC 35-41-1-11);

to participate in an arraignment or post-arraignment diversion program.

(3) Provide for deferred prosecution under IC 33-14-1-7 or IC 12-23-5-7 for an eligible individual, pending participation in a program of services.

(4) Ensure that entry into the forensic diversion program requires an individual's informed consent.

(5) Permit an individual participating in a forensic diversion program to discontinue participation sixty (60) days after the individual's primary caregiver, physician, or counselor has released the individual from all care except for basic monitoring.

SECTION 5. IC 11-12-5-7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 7. (a) The county sheriff or jail administrator shall allow a physician to prescribe and administer to an offender any medication:**

(1) that is available to an individual who is eligible for Medicaid under IC 12-15; and

(2) that is administered to the offender to treat a mental illness or addictive disorder.

(b) The county sheriff or jail administrator may issue practice guidelines but may not require a physician to obtain prior authorization before prescribing or administering a medication under subsection (a).

SECTION 6. IC 12-7-2-133.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 133.7. "Offender", for purposes of IC 12-15-4-3, has the meaning set forth in IC 33-19-3-2.5.**

SECTION 7. IC 12-7-2-149, AS AMENDED BY P.L.283-2001, SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 149. "Provider" means the following:**

(1) For purposes of IC 12-10-7, the meaning set forth in IC 12-10-7-3.

(2) For purposes of the following statutes, an individual, a partnership, a corporation, or a governmental entity that is enrolled in the Medicaid program under rules adopted under IC 4-22-2 by the office of Medicaid policy and planning:

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(A) **IC 11-10-4 and IC 11-10-4.5.**

(B) IC 12-14-1 through IC 12-14-9.5.

~~(B)~~ (C) IC 12-15, except IC 12-15-32, IC 12-15-33, and IC 12-15-34.

~~(C)~~ (D) IC 12-17-10.

~~(D)~~ (E) IC 12-17-11.

~~(E)~~ (F) IC 12-17.6.

~~(F)~~ (G) IC 12-17.7.

(3) For purposes of IC 12-17-9, the meaning set forth in IC 12-17-9-2.

(4) For the purposes of IC 12-17.2, a person who operates a child care center or child care home under IC 12-17.2.

(5) For purposes of IC 12-17.4, a person who operates a child caring institution, foster family home, group home, or child placing agency under IC 12-17.4.

SECTION 8. IC 12-15-43 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]:

Chapter 43. Medicaid Eligibility for Incarcerated Offenders

Sec. 1. Whenever an offender with a mental illness who is enrolled in the Medicaid program is incarcerated:

(1) to the extent permitted by federal law, the office shall suspend rather than terminate the offender's eligibility for Medicaid, and the offender's eligibility for Medicaid shall remain suspended rather than terminated for as long as is permitted by federal law; and

(2) the office shall not terminate the offender from the Medicaid program unless the offender:

(A) no longer meets the Medicaid eligibility criteria under which the offender initially qualified; and

(B) is not eligible for Medicaid under any other Medicaid eligibility category.

Sec. 2. Upon the release from incarceration of an offender whose Medicaid eligibility was suspended and upon receipt of the application described in section 3, the office shall restore the Medicaid eligibility of the offender unless the office determines that the offender is no longer eligible for Medicaid.

Sec. 3. The department of correction shall do the following to ensure that the benefits of an offender whose Medicaid eligibility was suspended are restored:

(1) Identify offenders with a mental illness whose federal Supplemental Security Income, Supplemental Security



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Disability Income, or Medicaid was suspended during incarceration.

(2) Ensure that an application for Medicaid is filed on behalf of an offender identified in subdivision (1) at least forty-five (45) days before the offender's release from incarceration.

(3) Ensure that an application for federal Supplemental Security Income or Supplemental Security Disability Income is filed on behalf of an offender as soon as possible following the offender's release from incarceration.

(4) Give every offender upon whose behalf an application for federal Supplemental Security Income, Supplemental Security Disability Income, or Medicaid was filed a copy of the application for Medicaid, federal Supplemental Security Income, or Supplemental Security Disability Income when the offender is released from incarceration.

SECTION 9. IC 12-23-5-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 1. In a criminal proceeding for a misdemeanor or infraction in which:

(1) the use or abuse of alcohol, drugs, or harmful substances is a contributing factor or a material element of the offense; or

(2) the defendant's mental illness other than substance abuse, is a contributing factor;

the court ~~may~~ **shall** take judicial notice of the fact that proper early intervention, medical, advisory, or rehabilitative treatment of the defendant is likely to decrease the defendant's tendency to engage in antisocial behavior.

SECTION 10. IC 12-23-5-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 2. (a) Subject to section 8 of this chapter, before conviction a court ~~may~~, **shall**, with the consent of the defendant and the prosecuting attorney, conditionally defer the proceedings described in section 1 of this chapter for up to one (1) year.

(b) The court ~~may~~ **shall** do the following:

(1) Order the defendant to satisfactorily complete an alcohol and drug services treatment program if the court makes a determination under section 1(1) of this chapter.

(2) Order the defendant to undergo treatment for the defendant's mental illness if the court makes a determination under section 1(2) of this chapter.

(3) Impose other appropriate conditions upon the defendant.

SECTION 11. IC 12-23-5-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 7. Prosecution ~~may~~

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1 **shall** be deferred under sections 2 through 5 of this chapter if a
 2 defendant has been charged with a **Class D felony**, a misdemeanor, or
 3 **an** infraction in which the use of alcohol or drugs was a contributing
 4 factor or material element of the offense or the defendant's mental
 5 illness was a contributing factor, unless at least one (1) of the following
 6 exists:

- 7 (1) The offense involves death or serious bodily injury.
- 8 (2) The defendant has a record of at least two (2) prior
- 9 convictions of forcible felonies (as defined in IC 35-41-1).
- 10 (3) Other criminal proceedings, not arising out of the same
- 11 incident, alleging commission of a felony are pending against the
- 12 defendant.
- 13 (4) The defendant is on probation or parole and the appropriate
- 14 parole or probation authority does not consent to the defendant's
- 15 participation.
- 16 (5) The defendant fails to meet additional eligibility requirements
- 17 imposed by the court.

18 SECTION 12. IC 33-14-1-7 IS AMENDED TO READ AS
 19 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 7. (a) A prosecuting
 20 attorney may withhold prosecution against an accused person if:

- 21 (1) the person is charged with a misdemeanor;
- 22 (2) the person agrees to conditions of a pretrial diversion program
- 23 offered by the prosecuting attorney; and
- 24 (3) the terms of the agreement are recorded in an instrument
- 25 signed by the person and the prosecuting attorney and filed in the
- 26 court in which the charge is pending.

27 (b) An agreement under subsection (a) may include conditions that
 28 the person:

- 29 (1) pay to the clerk of the court an initial user's fee and monthly
- 30 user's fees in the amounts specified in IC 33-19-5-1;
- 31 (2) work faithfully at a suitable employment or faithfully pursue
- 32 a course of study or vocational training that will equip the person
- 33 for suitable employment;
- 34 (3) undergo available medical treatment or counseling and remain
- 35 in a specified facility required for that purpose;
- 36 (4) support the person's dependents and meet other family
- 37 responsibilities;
- 38 (5) make restitution or reparation to the victim of the crime for the
- 39 damage or injury that was sustained;
- 40 (6) refrain from harassing, intimidating, threatening, or having
- 41 any direct or indirect contact with the victim or a witness;
- 42 (7) report to the prosecuting attorney at reasonable times;



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(8) answer all reasonable inquiries by the prosecuting attorney and promptly notify the prosecuting attorney of any change in address or employment; ~~and~~

(9) participate in ~~dispute resolution either under IC 34-57-3 or a program established by the prosecuting attorney~~; **an appropriate alcohol and drug services treatment program; and**

(10) participate in an appropriate therapy program.

(c) An agreement under subsection (a)(2) may include other provisions reasonably related to the defendant's rehabilitation, if approved by the court.

(d) The prosecuting attorney shall notify the victim when prosecution is withheld under this section.

(e) All money collected by the clerk as user's fees under this section shall be deposited in the appropriate user fee fund under IC 33-19-8.

(f) If a court withholds prosecution under this section and the terms of the agreement contain conditions described in subsection (b)(6):

(1) the clerk of the court shall comply with IC 5-2-9; and

(2) the prosecuting attorney shall file a confidential form prescribed or approved by the division of state court administration with the clerk.

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